

AMENDED IN SENATE MAY 22, 1997

**SENATE BILL**

**No. 527**

**Introduced by Senator Rosenthal**

February 24, 1997

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An act to add Sections 10232.9, 10232.93, and 10232.96 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 527, as amended, Rosenthal. Insurance: long-term care.

Existing California law regulates long-term care insurance, and requires that insurance to provide certain benefits.

Existing federal law provides that long-term care insurance is entitled to certain favorable tax treatment if it meets certain requirements.

This bill would provide that if an insurer provides long-term care intended to qualify for favorable tax treatment under federal law, the policy provisions pertaining to an insured's eligibility for benefits shall be as permissive as allowed under federal law and federal regulations. It would require insurers that offer that coverage to also offer coverage that conforms to the current state eligibility requirements.

The bill would require insurers to make available a summary of the differences at the time of solicitation, and would require ~~approval of the summaries by insurers to submit the summaries to~~ the Department of Insurance.

The bill would also require specified disclosures on the application forms for long-term care insurance.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10232.9 is added to the Insurance  
2 Code, to read:  
3 10232.9. (a) ~~(1)~~—If an insurer provides long-term  
4 care coverage intended to qualify for favorable tax  
5 treatment under the federal Health Insurance Portability  
6 and Accountability Act of 1996, Public Law 104-191, the  
7 policy provisions pertaining to an insured's eligibility for  
8 benefits shall be as permissive as allowed under federal  
9 law and federal regulations.  
10 ~~(2)~~—  
11 (b) In all cases, the policy provisions regarding  
12 eligibility for the insured to qualify for benefits shall be no  
13 more restrictive than the following:  
14 An individual must either:  
15 ~~(A)~~—  
16 (1) Have an impairment in cognitive ability.  
17 ~~(B)~~—  
18 (2) Be unable to perform two out of the following six  
19 activities of daily living:  
20 ~~(i)~~—  
21 (A) Eating.  
22 ~~(ii)~~—  
23 (B) Toileting.  
24 ~~(iii)~~—  
25 (C) Transferring.  
26 ~~(iv)~~—  
27 (D) Bathing.  
28 ~~(v)~~—  
29 (E) Dressing.  
30 ~~(vi)~~—  
31 (F) Continence.  
32 ~~(b) The commissioner shall adopt regulations,~~  
33 ~~following public hearings and comment, before~~  
34 ~~approving long-term care insurance products intended to~~

1 ~~qualify for favorable tax treatment under Public Law~~  
2 ~~104-191.~~

3 SEC. 2. Section 10232.93 is added to the Insurance  
4 Code, to read:

5 10232.93. (a) Any insurer that offers long-term care  
6 coverage intended to qualify for favorable tax treatment  
7 under Public Law 104-191 shall also offer, at the same  
8 time, long-term care coverage with comparable benefits  
9 that ~~does~~ *may* not qualify for such tax treatment, but that  
10 conforms to the more permissive, less restrictive, state  
11 eligibility requirements authorized by subdivision (c) of  
12 Section 10232.8.

13 (b) (1) Each insurer shall make available at the time  
14 of a solicitation a written summary of the differences  
15 between the eligibility requirements for home care  
16 benefits for policies that qualify for favorable tax  
17 treatment and for those that do not.

18 (2) The summary shall include, but not be limited to,  
19 clear and concise information disclosing that policies that  
20 do not qualify for favorable tax treatment only require  
21 the insured to be unable to perform two out of seven  
22 activities of daily living, and one of those activities can be  
23 “ambulating,” while policies that qualify for favorable tax  
24 treatment require the insured to be unable to perform  
25 two out of six activities of daily living, with “ambulating”  
26 not included among the activities. The meaning of  
27 “ambulating” shall be included in the summary.

28 (3) The summary shall also disclose that under policies  
29 receiving favorable tax treatment, policyholders must  
30 demonstrate they will need assistance with activities of  
31 daily living for at least 90 days before they can collect  
32 benefits, while policies that do not qualify for favorable  
33 tax treatment may not have such a time limit and may  
34 provide benefits for short-term illnesses where the  
35 policyholder requires assistance for less than 90 days.

36 (c) Insurers shall submit their summaries to the  
37 department ~~for review and approval.~~

38 (d) In addition to providing applicants with a  
39 summary, each insurer shall clearly inform prospective  
40 insureds of the major differences between policies that

1 qualify for favorable tax treatment, and policies that do  
2 not qualify, in all materials to be given to applicants,  
3 including promotional and descriptive marketing  
4 material, disclosure forms, policies and certificates, and  
5 evidences of coverage. Insurers shall submit those  
6 materials to the department for review and approval.

7 SEC. 3. Section 10232.96 is added to the Insurance  
8 Code, to read:

9 10232.96. (a) Application forms for long-term care  
10 policies intended to qualify for favorable tax treatment  
11 under Public Law 104-191, just above the signature line,  
12 and the first page of policies and certificates for such  
13 coverage, shall contain the following disclosure statement  
14 in at least 12-point boldface type:

15  
16 “YOU HAVE A CHOICE OF POLICIES

17  
18 THIS LONG-TERM CARE POLICY [or insert  
19 “certificate” if applicable] QUALIFIES FOR FEDERAL  
20 TAX BENEFITS. HOWEVER, IT IS MORE  
21 RESTRICTIVE IN PROVIDING HOME CARE  
22 BENEFITS THAN ANOTHER LONG-TERM CARE  
23 POLICY OFFERED BY THIS COMPANY THAT DOES  
24 NOT QUALIFY FOR TAX BENEFITS. THIS MEANS  
25 THAT A PERSON WHO PURCHASES A FEDERALLY  
26 TAX QUALIFIED POLICY MAY BE REQUIRED TO  
27 HAVE A GREATER LEVEL OF DISABILITY BEFORE  
28 BECOMING ELIGIBLE FOR HOME CARE BENEFITS  
29 THAN A PERSON WHO PURCHASES COVERAGE  
30 THAT DOES NOT QUALIFY FOR TAX BENEFITS.

31 THE TAX BENEFITS UNDER THIS POLICY WILL  
32 VARY DEPENDING ON YOUR AGE, ADJUSTED  
33 GROSS INCOME, AND UNREIMBURSED MEDICAL  
34 EXPENSES. SOME POLICYHOLDERS MAY RECEIVE  
35 SIGNIFICANT TAX BENEFITS, WHILE OTHERS  
36 MAY RECEIVE MODEST TAX BENEFITS, OR NONE  
37 AT ALL. WE RECOMMEND THAT YOU CONSULT  
38 WITH YOUR INSURANCE AGENT, ACCOUNTANT,  
39 AND DOCTOR TO DECIDE WHICH TYPE OF  
40 LONG-TERM CARE POLICY BEST FITS YOUR NEED;



1 THIS ONE WHICH QUALIFIES FOR TAX BENEFITS,  
2 OR THE ONE WE OFFER WHICH MAKES IT EASIER  
3 TO SECURE HOME CARE BENEFITS SHOULD YOU  
4 NEED ASSISTANCE.”

5  
6 (b) For purposes of complying with subdivision (c) of  
7 Section 10232.7, the first page of policies and certificates  
8 for long-term care coverage that is intended to qualify for  
9 favorable tax treatment under Public Law 104-191, shall  
10 contain the following disclosure statement in at least  
11 12-point boldface type:

12  
13 “YOU HAVE A RIGHT TO RETURN THIS POLICY

14  
15 IF YOU FIND THAT YOU ARE NOT SATISFIED  
16 WITH YOUR POLICY, YOU MAY RETURN IT TO  
17 [insert insurer’s name and address]. IF YOU SEND YOUR  
18 POLICY [or insert “certificate” if appropriate] BACK TO  
19 US WITHIN 30 DAYS AFTER YOU RECEIVE IT, WE  
20 WILL TREAT YOUR POLICY AS IF IT HAD NEVER  
21 BEEN ISSUED AND RETURN ALL OF YOUR  
22 PAYMENTS WITHIN 30 DAYS. IF YOU HAVE ANY  
23 QUESTIONS ABOUT YOUR POLICY, YOU MAY CALL  
24 OUR TOLL-FREE TELEPHONE NUMBER AT [insert  
25 toll-free telephone number].”  
26